IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1087 OF 2006
IN
CRIMINAL APPEAL NO. 535 OF 2006

Shri Sanjay Shrirang Nikam .. Applicant
V/s
State of Maharashtra ..Respondent.

Mr. D. D. Shinde, Advocate for the applicant

Mr. S.R. Shinde, APP for the State

CORAM : J.H. BHATIA, J.

DATE : 29TH JANUARY, 2007.

P.C.

. The applicant who is original accused No.2 was convicted along with other three accused for the offence punishable under Section 399 and 402 of Indian Penal Code, as well as under Section 3 (1) (ii), 3 (2) and 3(4) of MCOC Act as well as under Section 25(3) of Arms Act and were sentenced to undergo RI for 5 years each and to pay fine of Rs.1000/- for the offence punishable under Section 399 of IPC, RI for 4 years and to pay fine of Rs.1000/- each for the offence punishable under Section 402 of IPC. They were also sentenced to undergo R.I. for 5 years and to pay fine of Rs.5,00,000/- each

on each count for the offence punishable under Section 3(1)(ii),3(2), and 3(4) of MCOC Act. The applicant, along with another accused, was also sentenced to suffer RI for one year and to pay fine of Rs. 1000/- each for the offence punishable under section 25(3) of Arms Act. The applicant has preferred Appeal No. 535/2006, which is admitted. By this application, the applicant seeks to be released on bail pending final hearing and disposal of the appeal.

2. Heard Mr.D.D. Shinde, learned Counsel for the applicant and Mr. S.R. Shinde, learned A.P.P.for the State. Perused the Judgment and order of the learned trial Court. The learned Counsel for the applicant contends that besides this offence under section 399 and 402 IPC, only one criminal case was registered against the present applicant under section 326 of IPC prior to the incident of this case and therefore, there could be no justification to apply MCOC Act. On the other hand, learned APP Mr. Shinde has contended that even though against the present applicant only one case was registered prior to the incident of this case, against his other companions particularly, accused Nos. 1 and 4 very large number of serious criminal cases under

section 392,395, 366 etc. were registered from time to time. He also argued that it is not necessary that each of the accused should have been accused in two or more than two cases prior to the offence wherein MCOCA is applied and it would be sufficient if he is member of organised crime syndicate, acting as singly or collectively, as Syndicate or gang had indulged in activities of organised crime. He has referred to the definition of continuously committing illegal activities under section 2(d) and section 2(e) of MCOCA. The learned Special Judge has pointed out that against the present applicant previously an offence under section 395 IPC was registered and remaining three accused were also accused in the same case. As far as accused No.1 and 4 is concerned, large number of cases of dacoity and robbery were registered. In the present case also when the police party raided and nabbed 4 accused persons in a car, a revolver was found with the present applicant. Driver of the car had escaped and 4 other persons were actually put to the trial. They were found with the deadly weapons in the car after midnight in the circumstances which led the police to believe that they were planning and they had assembled with intention to commit dacoity. Taking into consideration the fact that

accused Nos. 1 and 4 were involved in large number of cases of dacoity and robbery prior to the incident of this case and the fact that the present applicant was also chargesheeted along with other accused for the offence of dacoity prior to this incident, and the fact that he along with remaining three accused was found in the above referred circumstances, the belief of police does not appear to be prima facie wrong. I hasten to add that it is not a stage to decide the matter on merits and to make any comments on the same. However, taking into consideration, the circumstances in which the accused was arrested and the fact that the trial Court has already found him guilty of the offence under MCOC Act along with offences under section 399, 402 of IPC, I find that it is not a fit case to grant bail.

3. For the aforesaid reasons, the application stands rejected.

4. The observations made in this order are limited for the purposes of deciding the bail application and will not be taken into consideration as and when the appeal is heard.

(J.H. BHATIA, J.)